IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1617 of 1983

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESHCHANDRA GOVINDJI PANDHARYA

Versus

SHANTILAL NAGINDAS

Appearance:

1. Civil Revision Application No. 1617 of 1983

MS K.J BRAHMBHATT for Petitioner

PARTY-IN-PERSON for Respondent No. 1

NOTICE SERVED for Respondent No. 1,2-11

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 20/08/2002

ORAL JUDGEMENT

The respondents were originally represented by the learned advocate Mr. K.K Chokhawala. On demise of

the said advocate Shri Chokhawala, notice was issued to the respondents. However, except for the respondents nos. 3/1 & 3/2, rest of the notices were received unserved. This Court [Coram : M.C Patel, J.] has on 4th February, 2002 ordered that the respondents must be treated as having been served. Accordingly, all the respondents are treated served.

The present Revision Application has been preferred under section 29 (2) of the Bombay Rents, Hotels & Lodging Houses Rates Control Act, 1947 [hereinafter referred to as, 'the Rent Act'] by the defendant-tenant.

The petitioner-herein is the tenant of the suit premises bearing Nondh No. 3839 of Ward No. 2 situated at Surat. The suit premises was let to the petitioner for the purposes of running a workshop. The suit premises was being used by the petitioner for the purposes of manufacturing iron-grill. The respondents-Landlords instituted Small Rent Suit No. 778 of 1977 in the Court of Additional Judge, Small Causes Court, Surat for recovery of possession of the suit premises. The plaintiff sought eviction of the petitioner on the ground that the petitioner was in arrears of rent for more than six months; that the petitioner did not use the suit premises for more than six months prior to the date of the suit and that the plaintiff requires the suit premises for bona fide personal purposes. In answer to the suit, the petitioner raised objection as to the standard rent. According to the petitioner, the monthly rent of Rs. 40/= was not the standard rent of the suit premises. The standard rent ought to be Rs. 25/= per month. The learned Trial Judge under his judgment and order dated 2nd December, 1981 dismissed the suit for possession and determined the standard rent at Rs. 40/= p.m. Feeling aggrieved, the plaintiffs preferred Regular Civil Appeal No. 117 of 1982 in the Court of District Judge, Surat. The petitioner also preferred cross objection challenging the decision of the trial Court as regards the standard rent. The learned District Judge under his judgment and order dated 30th September, 1983 partially allowed the appeal. The Court below was pleased to confirm the finding of the trial Court as regards the arrears of rent as well as bona fide requirement of the plaintiffs. However, the Court was pleased to hold that the petitioner had put the suit premises to non-user for more than six months entitling the petitioners to recover possession of the suit premises. Accordingly, the learned Judge allowed the appeal and directed the petitioner to hand-over

vacant possession of the suit premises. The cross objection preferred by the petitioner in respect of the standard rent of the suit premises has not been decided by the Court below. Feeling aggrieved, the petitioner-defendant has preferred the present Revision Application.

Ms. Brahmbhatt has read over the judgments of both the Courts below and has submitted that the learned District Judge has erred in holding that the petitioner had put the suit premises to non-user for six months. She has submitted that the plaintiffs could have recovered the possession of the suit premises only in case they had established before the court that the suit premises had not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit. Ms. Brahmbhatt has submitted that the petitioner has led sufficient evidence to show that the petitioner had not completely cease to use the suit premises. However, as part of the suit premises was damaged on account of construction of a building on the adjacent land, the petitioner could not continue to use the suit premises as workshop. Hence, the petitioner had to shift his workshop to another premises. But, the petitioner continued to use the suit premises as godown to store raw-materials as well as finished goods. Storing of raw-materials and the finished goods is integral part of his business. The petitioner, therefore, cannot be said to have not used the suit premises for the purpose for which it was let. The learned Judge has thus erred in passing the decree for possession. She has further submitted that the learned Judge has also erred in not deciding the cross objections preferred by the petitioner with respect to the standard rent of the suit premises. In support of her contention, she has relied upon the judgments of this Court in the matter of Shah Occhhavlal Motilal & Anr. vs. Kansara Dhanlaxmi Becharlal [(1986) GLH 389] and of National Insurance Co. Limited v. Durlabhji Jamnadas [2000 (2) 159].

It is true that the petitioner in his evidence has categorically stated that part of the suit premises was damaged on account of the construction of a hospital on an adjacent piece of land. The said damage rendered the suit premises unfit for carrying on the petitioner's business. The petitioner had, therefore, to shift his business to another plot of land. However, he continued to use the suit premises for the purpose of storage. further, except the bare statement made by the plaintiff,

no evidence has been led by the plaintiff in support of his plea. On the contrary, the plaintiff has categorically admitted that since the year 1970, he had not visited the suit premises at any time; that he had no personal knowledge about the damage caused to the suit premises. The plaintiff, thus, has no other evidence to prove that the suit premises was put to non-user as alleged. Moreover, the plaintiff's witness one Hiralal has also admitted that some damage was caused to the suit premises. In the circumstances, if the petitioner had to move his business to another premises, the petitioner cannot be said to have put the suit premises to non-user without the reasonable cause. Moreover, the petitioner's plea that he had been using the suit premises for storage has also not been controverted. In my view, the storage of raw materials and the storage of finished goods all are integral part of the business. Even if the suit premises is being used for storage alone, the same cannot be said to have been put to non-user, as alleged. The learned District Judge has failed to appreciate that the petitioner had to shift his manufacturing activities to another plot of land under compelling circumstances. No order for possession of the suit premises, therefore, could have been passed by the learned Judge under the provisions of Section 13 (1) (k) of the Rent Act.

It is also true that the petitioner had preferred cross objection against the order of the learned trial judge with respect to the standard rent of the suit premises. The learned District Judge had on 23rd June, 1982 directed the cross objection to be heard alongwith the appeal, however, has not decided the same alongwith the appeal. Ordinarily, in such circumstances, the matter ought to be remanded to the Court below for decision on the cross objection preferred by the petitioner but in the present case, I am of the opinion that no fruitful purpose shall be served by remanding the matter to the Court below. It would not be conducive to the interest of the parties to remand the matter nearly 25 years after the date of the suit. The petitioner did not lead any evidence with respect to the standard rent, except that since the part of the suit premises was damaged, the standard rent ought to be that of Rs. 25/= p.m. I am of the view that the matter with respect to the cross objection need not be remanded for no cogent evidence has been led by the petitioner. The cross objection preferred by the petitioner stands rejected.

For the aforesaid reasons, the Revision Application is allowed. The impugned judgment and order dated 30th September, 1983 passed by the learned District

Judge, Surat passed in Regular Civil Appeal No. 117 of 1983 is quashed and set-aside. The judgment and order dated 2nd December, 1981 passed by the learned Small Causes Judge, Surat in Small Rent Suit No. 778 of 1977 is restored. Rule is made absolute. The parties shall bear their own costs.

[Ms. R.M Doshit, J.]

Prakash*